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THE OBSERVATOR.

Of the Duty of Jury-men. Of the Grand Inqueſt or Grand Jury. Of a Jury-mans Oath. Of the Puniſhment of Perjur'd Jurors and Corrupt Judges. Of the Execution of Cook *the* Glouceſterſhire *Butcher.*

From Saturday Auguſt the 14th, to Wednesday Auguſt the 18th, 1703.

Country-m. MAſter *Obſervator*, I muſt claim your Promiſe of giving Us the Duty of *Jurymen*; 'tis a uſeful Subject, and altogether neceſſary.

Obſ. Honeſt *Country-man*, You ſhall ever find me as good as my Word; and therefore I'll begin with the *Grand Jury*, becauſe with it begins the Proceſs in all Criminal Caſes. It is called the *Grand-Jury*, becauſe it conſiſts of a greater Number than Twelve, as commonly of Twenty One, Nineteen; and I think according to the Practice of our Courts, of never leſs than Seventeen; and of theſe, if Twelve of them agree, the *Verdict* or *Preſentment* is *Valid*, tho' the reſt do not Conſent. Their *Office* and *Power* is very great, as extending to all Offences throughout the whole Country, for which they Serve. They are called the *Grand-Inqueſt*, becauſe they make Enquiry of all Offences, which they Report by *Preſentment*; and of what is brought Before them by way of *Bill*, they Determine by *Verdict*, and to do this, they are ſolemnly Sworn. The Oath of a *Grand Jury-Man*, as I find it in my old Book of Oaths, is as follows.

You ſhall truly Enquire, and due Preſentment make of all ſuch things as you are Charged withal on the Queens Behalf. The Queens Counſel, your Own, and your Fellows, you ſhall well and truly keep, and in all other things, the Truth Preſent. So help you God; And by the Contents of this Book.

This was the Antient Oath of a *Grand Jury*, and (as I think) never Expreſſed otherwiſe till the Reign of King *Charles* the Second, when in the Proceedings againſt the Earl of *Shaftsbury*, it was Expreſſed as below, and Publiſhed by His Majeſties ſpecial Command.

You ſhall diligently Enquire, and true Preſentment make of all ſuch Matters, Articles, and things as ſhall be given you in Charge, as of all other Matters and Things as ſhall come to your Knowledge, touching this preſent Service: The Queens Counſel, your Fellows, and your Own, you ſhall keep Secret: You ſhall Preſent no Perſon for Hatred or Malice; neither ſhall you leave any one Unpreſented for Fear or Affection, for Lucre or Gain, or any hopes thereof, but in all things you ſhall Preſent the Truth, the whole Truth, and nothing but the Truth, to the beſt of your Knowledge. So help you God.

So that you find by the Oath, the Office of a *Grand Jury*, is concern'd in two Things principally, *viz. Preſentments* and *Indictments*. The firſt of which, is, when the *Jury* themſelves, of their own *Knowledge*, or by their own *Inquiry*, have Notice of any *Crime*, *Offence*, or *Nuſance*, to the Injury of the *Publick*, and the *Diſturbance* of their Fellow *Citizens* or *Countrymen*; and which they eſteem fit to be Puniſh'd or Removed; to effect which, they do give the Court Notice thereof in Writing, in a brief manner without Form, only giving the Nature of the thing, the Perſons Name, and the Place. And this *Preſentment*, is the matter, whereon to Form an *Indictment*.

Country-m. Then, Maſter *Obſervator*, I hope the *Preſentment* of the Honeſt *Grand Jury*, the laſt Seſſions at the *Old-Baily*, will cauſe an Indictment againſt the *Players* in *Dorſet* Garden, and againſt ſuch as put up *Play-Houſe* Bills in the City of *London*.

Obſ. You ſee the Right Honourable the Lord Mayor, and the Court of Aldermen, have already taken Care of the latter; and I make no queſtion, when the *Players* ſhall be ſo Impudent as to open their Shop of *Lewdneſs* in the Liberty and Freedom of that Honourable City, but that they will be ſeverely Proſecuted.

To return to my Subject, there is this difference betwixt an *Indictment* and a *Preſentment*, the latter is always the Act of a *Grand Jury*, and is not as yet drawn into Form; whereas *Indictments* are drawn up, either by the Order of the Court, or at the Inſtance of the *Proſecutor*, and the ſame is brought *Before*, and *Deliver'd* to the *Grand Jury*, who Examine the Witneſſes to the *Bill* upon Oath, and as they think fit, return the Indictments endors'd, either *Billa Vera*, *a true Bill*, or *Ignoramus*, *We are Ignorant*. i. e. they cannot according to the Oaths they have taken, and the Evidence they have examin'd, find ſufficient ground for the Accuſation, ſo as to bring the Life or Reputation of their Fellow Subject in Queſtion.

One would think the Oath of a Grand Jury-man was ſufficient to direct him in the diſcharge of his Duty, that he hath a Faithful Counſellor within him, I mean his *Conſcience*, to be his Tutor, and ſuch a Counſellour too as will appear as Evidence againſt him at the Great Aſſizes, when the Righteous Judge ſhall bring all Mankind to his Impartial Bar. Our Fore-Fathers made the cleareſt Diſtinction between *Indicters Tryers*, and *Judges*, and made ſtrict Laws, that *Juries* ſhould not give Verdict againſt *Evidence*, nor *Judges* give Sentence againſt the *Verdict*, but under the moſt Severe Penalties that could be inflicted. Is it not worſe than Death for a Man to Forfeit all his Eſtate, and be thrown into Priſon, whilſt the Innocent Wife, and poor Harmleſs Children are thrown out of Doors, and depriv'd of all Subſiſtance for the Sins of a Perjured Husband and Father? For his Houſe muſt be pulled down, his Ground muſt be Plowed up, and his Trees Rooted out of the Earth, with Loſs of *Franchiſe*, and with a perpetual Brand of *Villany*. This is the *Common Law* for a *Perjur'd Jury-man*, and this alſo in Petty-Caſes: How much more Juſt and Equitable is it then in Caſe of Life and Death?

And

And for Corrupt *Judges*, our Law is moſt Severe. When the Grand *Eyres* were held in the greateſt ſtrictneſs, as was the Antient Cuſtom, King *Alfred* Hanged 30 or 40 more unjuſt Judges, than *Cambyſes* Flead: The *Mirror* is a good Comment on ſome Paſſages in *Alfreds* Life; and if it be true, that *Horn* Lived to the End of King *Edward*, it is much Wonder that on ſuch occaſion, he did not mention ſome of thoſe Judges by him ſo Puniſhed, when there was ſcarce any left but Honeſt *John* of *Mettingham*, and *Elias* of *Bechingham*. Of this the Diſſertations of *Fleta* may be ſufficient Proof, as that of Sir *William Thorp* and the *Great Judge*, in the third part of his *Inſtitutes* about *Corrupt Judges* and the *Judges Oath*.

It is very remarkable how curious the *Jews* were in Creating, or rather Ordaining of Judges, from whence the Phraſe of Ordination ſeems to be raiſed, which appears by Mr. *Seldens* Notes on the *Eutychian*, or *Alexandrian Antiquities*, full as old as St. *Mark* the *Evangeliſt*: And the *Jews* Puniſhments of evil Judges are ſevere and moſt remarkable, inſomuch where all others were again reſtored to their Offices after Corporal Puniſhment, their *Lord Chief Juſtice* or *Preſident* of their *Sanhedrim*, or any Chief Juſtice could never be reſtored again after ſuch Puniſhment; no, not to be as one of his Inferiour Collegues. The next time we meet I ſhall proceed farther in this Diſcourſe, at preſent let us hear what News you have brought us from *London*.

Country-m. Very little, indeed Sir, we want I can't tell how many *Holland* Mails, and the Packet from *Jamaica* is loſt; but I can tell you the *London* News ſays, That *Cook* the *Glouceſterſhire* Butcher was hanged at *Tyburn* the 11th, of this Month: You ſee I bring you ſome Stories or other, if I can't bring you Fighting Stories, I'll bring you Hanging Stories rather than ſtand out.

Obſ. I rejoyce at the Death of no Man, eſpecially of one that leaves the World after ſo *ignominious* a manner; I wonder'd indeed when I heard Interceſſion was made with the Queen for this Mans Life; for the Murder of a *Peace-Officer* is next to Treaſon, ſince it is committed on one that Repreſents Her Majeſties Perſon; if ſuch Perſons were Pardoned, few would take the Office of a *Conſtable* upon them, and ſuch as take part with ſuch Men are more like to make, than Diſperſe a Riotous Tumult: But theſe things muſt be done or Her Majeſties perſon it ſelf is not ſafe, and this can be done only by Legal Officers, who (if they are Murder'd in the Execution of their Offices, and the Murtherers are Pardoned) are but ill Precedents for others to take *Peace-Offices* upon them.

Country-m. Maſter *Obſervator* I have ſomewhat more to ſay on this Subject: A Friend of yours has ſent you this *Cooks* Dying Speech, and deſires you to ſend him Word by me, what you think *Cook* means in his *Prayer* when he beſeeches God to *Bleſs his Holy Catholick Church, and eſpecially that pureſt part of it, the Church of* England *and give unto it the ſame Honour, Power, and Glory as it had heretofore*?

Obſ. You muſt underſtand there are ſeveral that make Pretenſions to the Church of *England*. The *Papiſts* they claim it for their own, and pray that it may have the ſame Honour, Power and Glory as it had heretofore, that is, in times of Popery, when the King of *England* was the Popes Eldeſt Son, and His *Holineſs* on any Pretence could lay the whole Nation under an *Interdict*. There is another pretended Church of *England*, I mean that of Arch Biſhop *Sancroft*, whoſe Prieſthood are the *Non-jurant* Clergy, and whoſe Laiety are the Jacobites; theſe alſo pray that God would give their Church the ſame Power, Honour and Glory, as it had heretofore, that is, in the Glorious Days of *Paſſive Obedience* and *Perſecution*, when the *Ruſſels*, *Sydneys*, *Corniſhes*, *Batemans* and other Noble Patriots were taken away under pretence of Law to make Room for *Maſs-Houſes* in the City of *London*; and in order to make Free Born *Engliſhmen* the worſt of Slaves. Now, honeſt *Country-man*, as theſe pretended *Churches* of *England* had never the leaſt Honour, or true Glory; ſo may they never have any Power as heretofore, to diſturb the Gentle Reign of our truly Proteſtant Princeſs: And let the Arbitrary Power and the Mercileſs and Inhumane Practices of both theſe Churches, be an abomination to all good Men, and Sincere Proteſtants.

Country-m. Amen.

Obſ. Now, Honeſt *Country-man*, you and I are of Arch-Biſhop *Tenniſons* Church of *England*, which conſiſts of the pureſt Doctrines of the Chriſtian Religion, ſupported by the moſt Vertuous & Learned Hierarchy & Clergy that ever Adorned a *Proteſtant* Church; and may the ſame Power, Honour and Glory, which they have deſervedly obtain'd; may that Candour and Temper of Mind, and that Learning and Piety which now Adorn their Lives, Deſcend after them to their Succeſſors: May we never want ſuch a Queen, ſuch Biſhops and Clergy, nor ſuch Judges as we have at preſent: May we all be dutiful Subjects to Her Majeſty: May we hearken to the Pious Counſels of the Miniſtry, and be obedient to the Laws of the Land; and in ſo doing let us be the Glory and Praiſe of the whole Earth.

Country-m. Amen. ——— But Maſter *Obſervator*, what does he mean when he Prays to God to Confound the Devices of the *Diſſenters* if they ſhould riſe in Rebellion againſt the Queen and the Church?

Obſ. You had better put this Queſtion to Mr *Lorrain* the Ordinary of *Newgate*, he is the likelieſt Perſon to anſwer it, and to tell you what Church *Cook* was of. I am very well aſſured, none of the Diſſenters in *England* are Enemies to Her Majeſty, except the Papiſts, the Non-jurant Clergymen, and the Jacobites: Her Majeſties Sacred Perſon is in Danger of none but theſe Men. The other Diſſenters retain Principles of the trueſt Loyalty and Affection to the Queen, they ventured their *All* with their Proteſtant Brethren of the Church of *England* in the *Revolution*, which, (by the Goodneſs and Singular Favour of the Almighty to theſe Nations) gave us our moſt Excellent Queen. They never forget Her in their Publick Prayers, and their Purſes are always open to the Support of Her Government; and I make no Queſtion, if occaſion ſhould require, (which God forbid) they would Venture Life and Limb in Defence of the Queen and Realm.

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